

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10755 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESH BABAJI THAKOR

Versus

COMMISSIOER OF POLICE

Appearance:

Miss D.R. Kachhavah for the Petitioner
Mr.U.R.Bhatt,Asstt.Govt.Pleader for the
respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/06/96

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, petitioner Ramesh Babaji Thakor (hereinafter referred to as "the detenu") has challenged the order of his detention 6-11-95 passed by the Commissioner of Police, Ahmedabad City (hereinafter referred to as "the detaining authority") under section 3 (1) of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act").

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on three cases registered against the petitioner under the Bombay Prohibition Act. Out of these three cases, one is pending in the Court while in two other cases the investigation is going on. Over and above these cases, the detaining authority has also placed reliance on the statements of four witnesses regarding the alleged incidents of 20-10-95 as well as 25-10-95. Considering these materials, the detaining authority was of the view that the detenu is a "bootlegger" within the meaning of section 2 (b) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition is capable of being disposed off on the first contention advanced by Miss D.R.Kachhavah, learned Advocate, appearing for the petitioner, it is not necessary to refer to the other contentions raised in the petition. Miss Kachhavah submitted that a representation on behalf of the detenu was addressed by her on 19-12-1995 to the Chief Minister with a request to consider the same and since the said representation was not considered expeditiously, the valuable right of the petitioner under Article 22 (5) of the Constitution of India is violated and therefore the continued detention of the detenu has become illegal.

Miss Kachhavah has produced the representation dated 19-12-1995 addressed to the Chief Minister. As can be seen from the receipt of registered A/D, it was, in fact, sent on 19-12-1995 and as it is evident from the acknowledgement slip, the office of the Chief Minister had, in fact, received it. However, it is true that the acknowledgement slip does not bear any signature of the person who received it, or the date on which it was received. However, the Section Officer, Home Department (Special) in his communication dated 4-4-1996 addressed to the detenu has stated that the representation dated 19-12-95 made on behalf of the detenu by his Advocate and addressed to the Chief Minister as also the representation made to the Home Minister have been rejected by the State Government after careful consideration. This communication dated 4-4-96 would go to suggest that the office of the Chief Minister had in

fact received the representation dated 19-12-95. However, no material has been produced before this Court by the respondents to show whether the Chief Minister himself had considered the representation and, if yes, on which date it was considered. In absence of any specific date of receipt of the representation and the date of consideration thereof, it can safely be concluded that the representation was not considered expeditiously. This is particularly in view of the fact that the decision was communicated as late as on 4-4-1996 i.e. after about more than three and half months after the date of the representation. In a catena of decisions it is held that it is the right of the detenu to make representation which is required to be considered at the earlier point of time by the concerned authority and if there is delay in consideration of the representation, then the continued detention of the detenu becomes illegal. In view of this settled position of law, I hold that by not considering the representation dated 19-12-1996 expeditiously, the valuable right of the detenu under Article 22 (5) of the Constitution of India was infringed and, therefore, the continued detention of the detenu has become illegal.

In the result, this petition is allowed. The impugned order of detention dated 6-11-1995 Annexure "A" to the petition is quashed and set aside. The detenu Ramesh Babaji Thakor is ordered to be released forthwith, if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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